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No. 80-988

In The

Supreme Court of the United States

October Term, 1980

HAVENS REALTY CORPORATION and
ROSE JONES,

Petitioners,

vs.

SYLVIA COLEMAN, R. KENT WILLIS and
HOUSING OPPORTUNITIES MADE EQUAL,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED DECEMBER 16, 1980
CERTIORARI GRANTED APRIL 20, 1981

JOINT APPENDIX

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DOCKET ENTRIES

1979

Jan. 9—Complaint filed. No Jury Demanded.
Jan. 10—Summons Issued.
Jan. 31—Defts' Pleadings in Response to Complaint (Motions to Dismiss and Answer—1 pleading)
Jan. 31—Defts' Brief in Support of Motions to Dismiss, filed
Feb. 2—Notice to take depositions of pltfs 2-23-79 filed by dfts.
Feb. 16—ORDER, in accordance with memorandum filed herewith, claims of Pltfs. Coleman and Willis, and Housing Opportunities Made Equal are dismissed, and further Defts' motion to dismiss is hereby denied, DDW, ENT. 2/16/79, filed.
Feb. 16—Memorandum of the Court, filed.
Feb. 20—Pltfs' Memorandum of Law in Opposition to Defts' Motion to Dismiss, rec'd.
Feb. 16*—Pltf's Motion to Reconsider, filed.
Feb. 22—ORDER, motion of Pltfs. Coleman, Willis and Housing Opportunities Made Equal to reconsider, on 2/16/79 is DENIED and brief tendered on 2/20/79 marked filed by the Clerk will not be considered, ENT. 2/22/79, DDW. Copies mailed.
Mar. 5—Pltfs', Coleman, Willis & H.O.M.E., Motion for Entry of Final Judgment, filed.
Mar. 7—ORDER of FINAL JUDGMENT as to claims of pltfs. Coleman, Willis & Housing Made Equal vs. defts ent 3-6-79, DDW, filed 3-7-79. Copies to counsel.
Mar. 8—IPTO, non-jury, ent'd, 3/8/79, DDW, filed.
ing, fees paid, filed.
Mar. 15—Pltfs' Notice of Appeal, Appeal Bond Undertak-

Mar. 20--Record on appeal as to dismissed plaintiffs, 1 vol, del'd to Clerk, U.S.C.A.

Apr. 2—Pltfs' 1st Request for Production of Documents to Deft Havens Realty Corp., filed.

Apr. 2—Pltfs' 1st Interrogatoires [sic] to Deft Havens Realty, filed

Apr. 4—Deposition of Paul Allen Coles, taken on February 29, 1979, et al, on beahlf [sic] of Pltf's, Rec'd.

Apr. 9—Pltf's 2nd Request for Production of Documents to Deft Havens Realty Corporation, filed

May 4—Pltf's Notice to take the Depositions of Arthur E. Havens, on March 12, 1979, et al, filed.

May 4—ORDER, that deft., Havens Realty Corp., may have through 5/9/79 to file its responses to Pltfs' First Request for Production of Documents & Pltfs' First Interrogatories. Ent. by DDW on 5/4/79 & filed. Copies mailed.

May 9—Deft, Havens Realty's Answers to Interrogatories, filed.

May 9—Deft, Havens Realty's Objections to Interrogatories, filed.

May 23—Deposition of Rose Jones, et al, taken on May 12, 1979, by pltfs., Rec'd.

May 30—Pltf's Motion for Order changing the deadline for filing of motion for class certification to May 31, 1979, filed.

May 30—ORDERED that the Initial Pre-Trial Order in this case be amended as follows: Pltfs shall file Motion for Class Certification on or before March 31, 1979, and Defts shall file response no later than 10 days after the filing of Motion. ENT 5-30-79, DDW, and filed. Copies mailed.

May 31—Pltf's Motion for Certification as a Class Action, filed

May 31—Pltf's Memo. of Points and Authorities in Support of Pltf's Motion for Certification as a Class Action, filed.

May 31—Affidavit of Dr. Lynn D. Nelson, filed

June 11—Motion for dismissal of class action with supporting brief filed by dfts.

June 18—Pltfs' Rebuttal to dfts opposition to class cert. filed.

Aug. 15—Pltfs' Memorandum of Points & Authorities In Support of Certification of Pltf. Classes & In Opposition to Certification of A Deft. Class, filed.

Sept. 26—ORDER that deft class not be certified; class discovery to be reopened with the exception of young [sic] v. Rucker & Richardson 79-0071 to all pltfs an additional 45 days for class discovery relating to numerosity requirement; pltfs to submit adequate proofs of numerosity in 60 days or motions for certification will be denied; defts to respond to pltfs' proofs in 10 days, ent. 9-26-79, DDW, filed. Copies mailed.

Sept. 26—ORDER that cases 78-1071-R, 79-0024-R, 79-0070-R, 79-0071-R, 79-0072-R, 79-0111-R, and 79-0112-R be consolidated for trial and be continued to June 23, 1980 at 10:00 a.m., to be completed on or before June 26, 1980; discovery is continued to May 1, 1980; and FPTC is set for June 18, 1980 at 10:00 a.m., ent 9/26/79, DDW, filed. Copies mailed.

Oct. 3—Deposition of Barbara Wurtzel taken on Sept. 19, 1979 at 4:15 p.m., rec'd.

Nov. 13—Pltf's Second Interrogatories to Deft. Havens Realty Corp., filed.

Nov. 26—Pltfs' Memorandum on Numerosity in Response to Court's Order of 9/26/79, filed.

Dec. 6—Defts' Motion for Denial of Pltf's Class Certification Motion, filed.

Dec. 6—Defts' Memorandum of Argument, filed.

Dec. 12—Deft. Havens Realty Corp's Answers to Pltf's Second Interrogatories, filed.

Dec. 14—Pltf's response to defts' motion for denial of pltf's class cert. motion filed.

Dec. 28—Pltf, Home's, motion for remand frm 4th Cir. and to vacate jdgmnt ent. 3-6-79 filed.

Dec. 28—Pltf's brief in support of Home's motion to set aside and vacate final judgment filed.

Dec. 31—Request to Court of Appeal for remand ent 12-31-79, DDW, filed. Cps to counsel and Ct. of Appeals.

1980

Feb. 13—ORDER certifying class and subclass; pltf. Paul Allen Coles to act as representative for both; parties to confer toward goal of proposing a notice of procedure for Court approval in 15 days, ent 2/13/80, DDW, filed. Cps. mailed.

Feb. 13—Memorandum of Court, filed.

Feb. 27—Pltfs' Motion for extension of time to file Notice of Procedure to March 13, 1980, filed. Copies mailed.

Feb. 28—ORDER that Parties directed to tender their proposals of procedure to Court no later than 3-4-80, ent. 2-28-80, DDW, filed. Copies mailed.

Mar. 11—Defts' Response to Court's Order Dated 13 Feb. 1980, filed

Mar. 11—Pltf's Response to Court's Order Dated Feb. 13, 1980, with exhibits, filed.

Mar. 14—NOTICE OF PENDENCY OF CLASS ACTION ent 3/14/80, DDW, filed. Copies mailed.

Mar. 14—ORDERED that notice shall be published once a week for 4 weeks in *Afro-American;* DIRECTED that counsel confer for purposes of notice procedure; defts. shall furnish plts. addresses of tenants managed by defts.; pltfs. shall mail copy of notice to tenants; pltfs. shall in 5 das. of completion file with Court a certificate that directive for dissemination of notice has been followed and order of publication has been completed; ent 3/14/80, DDW, filed. Copies mailed.

Apr. 1—Defts' Interrogatories to Pltf., filed.

Apr. 17—Pltf's motion for clarification of order of 3-14-80 filed.

Apr. 17—Pltf's Memorandum in support of motion for clarification filed.

Apr. 18—Defts' Response to Pltf's "Motion for Clarification of Order of March 14, 1980", filed.

Apr. 30—Pltfs' Certificate of Compliance with Court Order of 3-14-80, filed

May 1—Pltf's Answers to Defts' Interrogatories, filed.

May 19—Pltf's Supp. Answer to Interrogatories, filed

June 9—Pltfs' Proposed Findings of Fact and Conclusions of Law, filed

June 13—Pltf's Supplemental Answers to Interrogatories, filed.

June 18—F.P.T.O. ent. 6/18/80, DDW, filed.

June 19—Defts' Proposal Concerning Proposed Findings of Fact, filed

June 19—Defts' Proposals Concerning Proposed Conclusions of Law, filed.

June 23—TRIAL PROCEEDINGS: WARRINER, J., GAMBLIN, OCR. APPEARANCES: PARTIES W/ COUNSEL. MATTER CAME ON FOR TRIAL ON MERITS. WITNESS EXCLUDED. COUNSEL HEARD

IN ARGUMENT AS TO ADMISSIBILITY OF CERTAIN PLTF EXHIBITS. COURT WILL ADMIT PLTF EXHIBITS 18-41 and 166. OPENING STATEMENTS MADE. PLTF ADDUCED EVIDENCE; RESTED. DEFTS' MOTION TO DE-CERTIFY THE CLASS HEARD; DENIED. DEFTS' MOTION TO STRIKE THE PLTF'S EVIDENCE HEARD; DENIED. DEFTS' MOTION FOR DIRECTED VERDICT HEARD; DENIED. DEFTS' EVIDENCE BEGUN. TRIAL ADJOURNED FOR THE DAY; TO RESUME AT 10:00 A.M. ON 6/23/80. (6 HRS., 01 MINS)

June 23—TRIAL PROCEEDINGS: SECOND DAY. WARRINER, J., GAMBLIN, OCR. APPEARANCES: PARTIES W/COUNSEL. DEFT ADDUCED EVIDENCE; RESTED. EVIDENCE CONCLUDED. ARGUMENT OF COUNSEL HEARD. FINDINGS OF FACTS AND CONCLUSIONS OF LAW GIVEN FROM THE BENCH. COURT FOUND IN FAVOR OF THE PLTF BUT RESERVED JUDGMENT ON MATTER OF DAMAGES PENDING ANY CLASS MEMBERS APPEARANCE. THE COURT FOUND DEFT JONES NOT LIABLE IN CASE OF PLTF COLES AND LIABLE AS TO CLASS MEMBERS. COUNSEL MAY FILE BRIEFS ON DAMAGE QUESTION, ATTORNEY'S FEES, AND LIABILITY TO OTHER CLASS MEMBERS. (1 HR., 52 MINS.)

July 2—Joint motion to establish memoranda schedule filed.

July 2—ORDER, that plft. shall file with the Court his post trial memorandum on the issues of damages, equitable relief & attorneys' fees on or before 7/30/80; defts' shall file their response within 7 days after service upon the defts' of pltfs' memorandum pltf. to file rebuttal 7 days

thereafter after service etc. Ent. by DDW on 7/2/80 & filed. Copies mailed.

July 14—Findings of Fact before DDW on June 23, 1980 (transcript), filed.

July 14—Transcript of Proceedings on May 24, 1980 before DDW, filed.

July 31—Pltf's post-trial memorandum, with exhibits, filed.

Aug. 6—Defts' Reply Memo., filed

Aug. 11—Excerpt from Proceedings before DDW on 6-23-80 and 6-24-80, filed

Aug. 13—Pltf's Post-Trial Memo. in Response to Defts' Reply Memorandum, filed.

Aug. 22—ORDER, that judgment will be entered in favor of pltf., Mr. Coles, against deft., Havens Realty Corp. for compensatory damages in the amount of $1,250 and for punitive damages in the amount of $1,000. Pltf's counsel to file with the Court circulation figures of Richmond Times Dispatch etc. Pltfs' counsel to file an affidavit regarding time records etc. Any class member desiring monetary damages shall file an affidavit within 30 days after completion of publication of newspaper advertisement etc. Counter-Affidavits shall be filed 30 days after the end of period for filing affidavits by class pltfs. Rebuttal affidavits to be filed 15 days etc. All claims not resolved by counsel shall be submitted to the Court. Ent. by DDW on 8/22/80 & filed. Copies mailed.

Aug. 25—Judgment etn. by Clerk 8-25-80, filed. Copies mailed.

Sept. 22—Per Curiam Opinion of U.S.C.A. reversing and remanding decision of U.S.D.C., filed.

Sept. 24—Deft's, Havens Realty Corporation, Notice of Appeal, filed ($70 fees pd.)

Oct. 24—Pltf's Response to Court Order of Aug, 22, 1980, filed.

Oct. 24—Second Affidavit of Daniel M. Singer, filed.

Oct. 24—Second Affidavit of James F. Stutts, filed, with exhibits A-C in brown expandable.

Oct. 27—Per Curiam Opinion of U.S.C.A., reversing and remanding the decision of U.S.D.C.

Oct. 27—Certified Copy of Judgment of U.S.C.A. reversing and remanding the decision of U.S.D.C.

Oct. 27—Case file in I Vol. Rec'd from Clerk U.S.C.A.

Nov. 3—Transcript of Proceedings before DDW on June 23, 1980, filed.

Nov. 3—Transcript of Proceedings before DDW on June 23 and 24, 1980, filed.

Nov. 3—Deft Havens Realty's Motion for Retention of Record in the District Court, filed

Nov. 4—ORDERED that the entire record in action shall be retained in this Court. Clerk shall transmit a copy of Order and docket entries to Court of Appeals. ENT 11-4-80, DDW, and filed. Copies mailed.

Dec. 2—Parties' Joint Motion to Stay Further Proceedings, filed

Dec. 2—Parties' Joint Motion to Approve Proposed Consent Order and to Notice the Class, filed

Dec. 3—ORDER, that further proceedings herein concerning the claims asserted by HOME, Coleman & Willis are stayed pending further Order of this Court. Ent. by DDW on 12/3/80 & filed. Copies mailed.

1981

Jan. 8—Revised Claim Form, received.

Jan. 8—Revised pages 6, 7, and 8 to Consent Order, received.

Feb. 3—ORDER, that a hearing shall be held before Hon. DDW on 2/17/81 at 1:00 p.m. re: proposed settlement etc. Notice of Hearing to be published etc. Claims to be submitted to Clerk no later than 4/18/81. Ent. by DDW on 4/18/81 & filed. Copies mailed.

Feb. 3—Notice Of Hearing On Proposed Consent Order Ent. By DDW on 2/3/81, filed. Copies mailed.

Feb. 17—CONSENT ORDER, (matter referred to Magistrate), ent. 2-17-81, DDW, filed. Copies mailed.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

PAUL ALLEN COLES, SYLVIA COLEMAN,
R. KENT WILLIS,
and on behalf of all others similarly situated, and
HOUSING OPPORTUNITIES MADE EQUAL,
a Virginia Corporation,

Plaintiffs,

v.

HAVENS REALTY CORPORATION,
a Virginia Corporation, and
ROSE JONES,

Defendants.

Civil Action No. 79-0024
Filed Jan. 9, 1979
Clerk, U. S. Dist. Court
Richmond, Va.

COMPLAINT

(For Declaratory Judgment, Damages and Injunctive Relief)

1. This is an action for a declaratory judgment, damages and injunctive relief to redress the deprivation of rights, privileges and immunities of the plaintiffs, and all other members of the class they represent, from the acts, patterns, practices and policies of the defendants that restrain, limit, classify, segregate and otherwise discriminate on the basis of race or color, in the rental of residential housing units in Henrico County, Virginia. This action involves the pattern and practices of defendants of denying housing on the basis of race and of racial steering, a practice by which

real estate brokers and agents preserve and encourage patterns of racial segregation in available housing by steering members of racial and ethnic groups to buildings occupied primarily by members of such racial and ethnic groups and away from buildings and neighborhoods inhabited primarily by members of other races or groups, a practice in violation of the statutes set forth herein. This action arises under 42 U.S.C. § 3601 and § 3604 (the Fair Housing Act of 1968), and 42 U.S.C. § 1982 (the Civil Rights Act of 1866). This Court has jurisdiction of this action under 42 U.S.C. § 3612(a), 28 U.S.C. §§ 1331, 1337, 1343(4) and 2201.

2. The individual plaintiffs are members of a class composed of all persons who have rented or sought to rent residential property in Henrico County, Virginia, and who have been, or continue to be, adversely affected by the acts, policies and practices of defendants complained of herein.

3. The number of persons in the class represented by the individual plaintiffs ("plaintiff class") is so numerous that joinder of all members is impracticable.

4. There are questions of law and fact common to the plaintiff class. These questions include, among others, whether or not the practices engaged in by defendants in Henrico County deprive the members of the plaintiff class of civil rights secured to them by the Fair Housing Act of 1968 and the Civil Rights Act of 1866. The method by which the defendants violate these statutes and engage in the practice of racial steering is one of the questions of fact common to the plaintiff class.

5. The claims of the representative plaintiffs are typical of the claims of the plaintiff class. The representative plaintiffs will fairly and adequately protect the interests of the plaintiff class because their interests and those of the plaintiff class are coextensive. Counsel for the representative

plaintiffs are capable of conducting the litigation commenced by the filing of this complaint.

6. Defendants have acted or refused to act on grounds generally applicable to the plaintiff class, thereby making appropriate final injunctive and corresponding declaratory relief with respect to the plaintiff class as a whole.

7. The individual plaintiffs to this action are all residents of the City of Richmond or Henrico County and have been injured by the discriminatory acts of the defendants. Plaintiff Paul Allen Coles is a black man who has attempted to rent residential property from the defendants ("renter plaintiff"). The remaining individually-named plaintiffs, Sylvia Coleman, a black woman, and R. Kent Willis, a white man ("tester plaintiffs"), have consulted defendants with regard to available rentals in the course of their employment with Housing Opportunities Made Equal to determine whether or not defendants have practiced racial steering in the rental housing market.

8. Housing Opportunities Made Equal ("HOME") is a nonprofit corporation organized under the laws of the State of Virginia with its principal place of business at 503 East Main Street, Richmond, Virginia, 23219. Its purpose is to make equal opportunity in housing a reality in the Richmond Metropolitan Area. Its membership is multi-racial and includes approximately 600 individuals. Its goals include the elimination of unlawful racially discriminatory housing practices that cause injury to its members, to all persons who seek to rent apartment units in the Metropolitan Area and to all persons who reside in the Metropolitan Area. HOME seeks to assure to all such persons the right to the important social, professional, business, economic and political benefits of interracial associations that arise from living in integrated communities. The activities in

which HOME engages include, but are not limited to, the following:

(a) Seeking to assist and aid individuals of all races in obtaining housing throughout the Richmond Metropolitan Area, through the operation of a housing counselling service;

(b) Investigating allegations of discrimination and referring complaints to appropriate state and federal agencies;

(c) Conducting independent investigations of real estate brokers located in the Richmond Metropolitan Area to determine whether equal opportunity in housing is available, and taking such steps as it may deem necessary to assure such equal opportunity and to eliminate racially discriminatory housing practices.

9. Defendant Havens Realty Corporation is a Virginia Corporation with its principal place of business at Camelot Townhouses and Colonial Court Apartments, 9108-A Quioccasin Road in Henrico County, Virginia. At all times relevant to this action, Havens Realty Corporation has been engaged in the business of real estate brokerage services as to apartment rental units in Richmond. Defendant Rose Jones is an employee of Havens Realty Corporation.

10. Like other metropolitan areas throughout the United States, the Richmond Metropolitan Area, including Henrico County, has been marked by racially segregated residential housing patterns. Neighborhoods have reflected the impact of segregation resulting from the actions of private individuals and groups, restrictive covenants, zoning and other factors, so that area neighborhoods can generally be identified as "white" or "black" neighborhoods. The practice or [sic] "racial steering" engaged in by these defendants, contributes to maintaining existing neighborhood segregation and inhibits the development of stable racially integrated neighborhoods.

11. Defendants treat differently white and non-white prospective lessees on the basis of race or color. Defendants have engaged in practices to the detriment and injury of the plaintiffs herein and others similarly situated by consistently showing only prospective white customers ("customers") rental units in a building occupied primarily by white tenants, by consistently refusing or failing to show black customers ("customers") rental units in the aforementioned building occupied primarily by white tenants, notwithstanding the "listings" for rentals in that building that fall within the category of housing sought by such black customers, and on occasion by failing or refusing to show prospective black customers rental units in a less racially segregated building or by showing such prospective black customers only rental units in the less racially segregated building.

12. The patterns, practices, acts and policies of defendants, as hereinabove alleged, in restraining, limiting, classifying, segregating and otherwise discriminating on the basis of race or color in the rental of residential real estate in Henrico County, and in the rendition of real estate brokerage services in connection therewith, have caused injury to the plaintiff class. Renter plaintiff Coles has been denied the right to rent real property in a predominantly white-occupied building in Henrico County in violation of the 1866 Civil Rights Act, 42 U.S.C. § 1982 and the Fair Housing Act of 1968, 42 U.S.C. § 3604, in the following manner: On July 13, 1978, plaintiff Coles visited the office of Havens Realty Corporation located at the Camelot Townhouses to inquire into available apartments at Camelot Townhouses. Camelot Townhouses is an apartment complex predominantly occupied by whites. Coles was informed that no apartments were available in the Camelot complex. He was told that an apartment was available in the adjoining Colonial Court complex. The Colonial complex is inte-

grated. That same day white tester John Barr telephoned the Havens office and was informed by defendant Rose Jones that an apartment was available in Camelot Townhouses. That same day John Barr visited the Havens office and was informed by Susan Newton, then an employee of Hanvens [sic], that an apartment was available in the Camelot Townhouses.

13. Defendants have evidenced a pattern, practice and policy of racial steering to the specific injury of tester plaintiff Sylvia Coleman, in the following manner:

(a) On March 14, 1978, black tester Sylvia Coleman asked about vacancies at Colonial Court but was told by the defendant Rose Jones that nothing was available; that same day white tester R. Kent Willis asked about vacancies at Colonial Court and was told by defendant Rose Jones that two apartments were available, both at Colonial Court and Camelot Townhouse apartments;

(b) On March 21, 1978, black tester Sylvia Coleman asked generally about vacancies in apartments in Henrico County but was told by defendant Susan Newton that nothing was available; that same day white tester R. Kent Willis asked about vacancies at apartments in Henrico County and was told by defendant Rose Jones that an apartment was available at Colonial Court;

(c) On March 23, 1978, black tester Sylvia Coleman asked Rose Jones about vacancies in defendant's buildings but was told by employee Susan Newton that nothing was available; that same day white tester R. Kent Willis asked about vacancies in the defendant's apartment complexes and was told by employees Rose Jones and Susan Newton that an apartment was available at Colonial Court;

(d) On July 6, 1978, black tester Sylvia Coleman asked about vacancies at the Camelot Townhouses complex, but was told that nothing was available at Camelot Townhouses;

black tester Coleman was told that there was a vacancy at Colonial Court apartments; that same day white tester John Barr asked about vacancies at Camelot Townhouse apartments and was told an apartment was available at Camelot Townhouse apartments.

14. Renter plaintiff Paul Allen Coles and tester plaintiff Sylvia Coleman have, because of their race, been denied the right to rent real property in Henrico County, Virginia, and therefore have been deprived of the advantages and conveniences they would have enjoyed from living in this area and the right to the important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices. These individual plaintiffs and the members of the class they represent have been deprived of the right to live in communities that are not limited, classified or segregated on the basis of race or color, in violation of the Fair Housing Act of 1968, 42 U.S.C. § 3601, *et seq.;* and the right to make and enforce contracts for the lease of real estate, in violation of the Civil Rights Act of 1866, 42 U.S.C. § 1982.

15. White tester plaintiff R. Kent Willis and the members of the class he represents, have been deprived of the right to the important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices, in violation of the Fair Housing Act of 1968, 42 U.S.C. § 3601, *et seq.*. [sic]

16. Plaintiff HOME has been frustrated by defendants' racial steering practices in its efforts to assist equal access to housing through counseling and other referral services. Plaintiff HOME has had to devote significant resources to identify and counteract the defendant's racially discriminatory steering practices. HOME members have, as a result

of defendants' practices, been deprived of the right to the important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices, in violation of the Fair Housing Act of 1968, 42 U.S.C. § 3601, *et seq.*. [sic]

17. The individual plaintiffs and the class they represent have been subjected to acts, patterns, practices and policies of the defendants, which have created, cultivated and perpetuated a discriminatory "dual" housing market in Henrico County by limiting, classifying and segregating said communities on the basis of race or color, in violation of the Fair Housing Act of 1968, 42 U.S.C. § 3601, *et seq.*. [sic]

18. The plaintiffs have no adequate remedy at law. The individual plaintiffs and the class they represent have suffered, are now suffering and will continue to suffer irreparable harm and injury by the unlawful policies and discriminatory practices of the defendants. The infringement upon the rights of the plaintiffs and the class they represent is grave, immediate and continuing.

WHEREFORE, the plaintiffs pray that this Court enter a judgment:

(a) declaring that defendants' acts, practices and policies complained of herein violate rights secured by the Civil Rights Act of 1866, 42 U.S.C. § 1982, and Title VIII of the 1968 Civil Rights Act, 42 U.S.C. § 3601, *et seq.*;

(b) enjoining the defendants, their agents, employees, successors, assigns, and those acting in active concert, combination or participation with them, from engaging in policies and practices which deprive plaintiffs and the class they represent of rights secured by 42 U.S.C. §§ 1982 and 3601, *et seq.*, including, but not limited to, a judgment:

(i) enjoining defendants from refusing or failing to show

or rent any housing unit owned or managed by the defendants to any person because of race or color;

(ii) enjoining defendants from steering or channelling any prospective renter toward or away from any particular rental unit, complex or neighborhood on account of race or color;

(iii) enjoining defendants from discriminating against any person in the terms, conditions, or privileges of renting, or in the provision of services in connection therewith; and

(iv) enjoining defendants from representing to any person, because of race or color, that any rental unit is not available for inspection or rental when such unit is in fact so available;

(c) ordering defendants to take affirmative action supervised by this Court, to overcome the effect of their past discriminatory actions, such affirmative action to include, *inter alia*:

(i) the soliciting and encouraging of blacks to rent units in predominantly white communities and whites to rent such units in predominantly black and integrated communities;

(ii) the adequate advertising in appropriate publications and circulation of information concerning apartments available in defendants' files;

(iii) the adoption of a uniform system of rules, regulations, codes, etc., together with enforcement procedures, designed to ensure that defendants' past discriminatory actions are not repeated or continued, including the adoption of a policy of hiring personnel in its real estate office without regard to race; and

(iv) the prompt reporting in written form by defendants of such information as the Court deems necessary to enable the efficient monitoring of the defendants' compliance with other parts of the Court's order and the Fair Housing Laws of the United States;

(d) awarding to renter plaintiff Paul Allen Coles the sum of $50,000 in actual damages and $100,000 in punitive damages for the violation of his rights by these defendants;

(e) awarding to each of the tester plaintiffs Sylvia Coleman and R. Kent Willis the sum of $1,000 in actual damages and $1,000 in punitive damages;

(f) awarding to HOME its expenses of testing and monitoring defendants' practices and its expenses pursuant to this litigation;

(g) awarding to plantiffs their costs and reasonable attorney fees in this action; and

(h) granting such additional and further relief as the Court deems just and equitable.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

PAUL ALLEN COLES, SYLVIA COLEMAN,
R. KENT WILLIS, and on behalf of all others
similarly situated, and
HOUSING OPPORTUNITIES MADE EQUAL,
a Virginia Corporation

Plaintiffs,

v.

HAVENS REALTY CORPORATION,
a Virginia Corporation
and
ROSE JONES,

Defendants.

Filed Jan. 31, 1979
Clerk, U. S. Dist. Court
Richmond, Va.
Civil Action No. 79-0024

DEFENDANTS' PLEADINGS IN RESPONSE TO COMPLAINT

MOTIONS TO DISMISS

The defendants, by counsel, state that the Complaint filed against them herein fails to state a claim upon which relief can be granted, and the defendants thus move for Dismissal of Complaint, in the particular respects and for the reasons set forth in the numbered paragraphs which follow.

1. As stated in paragraph 1 of the Complaint herein, the plaintiffs' action purports to arise under the Fair Housing Act of 1968 and the Civil Rights Act of 1866. As to the former, both defendants state that it affirmatively appears

on the face of the Complaint that the only allegedly discriminatory act of which the plaintiffs complain herein which took place within 180 days of the filing of the Complaint was that of July 13, 1978. Accordingly, both defendants state that all other claims for which relief is sought herein under the Fair Housing Act of 1968 are time barred. 42 U.S.C. § 3612(a).

2. With regard to the plaintiff Housing Opportunities Made Equal ("HOME"), the defendants state that the Complaint fails to allege any remediable wrong against the corporation itself. The Complaint further fails to allege that any of HOME's approximately 600 individual members reside in or have sought to reside in either of the apartment complexes concerning which complaint is raised in the Complaint, nor for that matter does the Complaint allege that any HOME member resides anywhere in Henrico County. Accordingly, insofar as it asserts claims in behalf of HOME, the Complaint fails to state a cause of action upon which relief may be granted under either the Fair Housing Act of 1968 or the Civil Rights Act of 1866.

3. The defendant Rose Jones states that the allegations of specific incidents contained in paragraph 12 and in paragraph 13(b) and 13(d) fail to inculpate her in any way in the alleged denial of rental housing to the individuals referred to in the said paragraphs, for which reason, insofar as the Complaint seeks relief against the defendant Rose Jones by reason of the said incidents, it fails to state a claim against her upon which relief can be granted.

4. With regard to the tester plaintiffs (Sylvia Coleman and R. Kent Willis), the Complaint nowhere alleges that the tester plaintiffs have made any attempt in good faith to rent residential property from the defendants, and the description of the tester plaintiffs contained in paragraph 7 of the Complaint leads clearly to the opposite conclusion.

The defendants thus state that, insofar as the tester plaintiffs complain of having been themselves denied rental housing, the Complaint fails to state a claim upon which relief can be granted. In his Complaint however, tester plaintiff R. Kent Willis goes further and seeks to ground his claim for relief in the alleged deprivation of his "rights to the important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices." The defendants state that, having failed to allege that he resides in either of the apartment projects concerning which complaint is raised herein, and in failing to allege that he resides within reasonable proximity of either of the said apartment projects, the Complaint of the testor plaintiff R. Kent Willis fails to assert any substantial injury and thus fails to state a claim upon which relief can be granted.

5. The defendants state that the Complaint fails to assert that any of the individual plaintiffs actually offered to rent an apartment in either of the apartment complexes concerning which the individual plaintiffs complain herein, in consequence of which none of the individual plaintiffs has standing to assert a claim that he or she has been denied rental housing by the defendants. The defendants accordingly state that, insofar as the Complaint seeks to recover for the denial of rental housing to the individual plaintiffs, it fails to state a claim upon which relief can be granted.

6. Plaintiffs seek in their Complaint to proceed in class action form. They describe their class in paragraph 2 of their Complaint as "all persons who have rented or sought to rent residential property in Henrico County, Virginia, and who have been, or continue to be, adversely affected by the acts, policies and practices of defendants complained of herein." It is not alleged in the Complaint that any mem-

ber of HOME, nor either the plaintiff Sylvia Coleman or the plaintiff R. Kent Willis, has rented or in good faith sought to rent residential property in Henrico County, Virginia and found himself or herself to have been adversely affected by the acts, policies and practices of defendants concerning which complaint is raised in the Complaint. As defendants read the description of the class contained in paragraph 2 of the Complaint, they conclude that in order to fall within the class, a person must both have rented or sought to rent residential property, *and* been adversely affected. Since it is not alleged that Sylvia Coleman, R. Kent Willis, or any member of HOME has rented or in good faith sought to rent residential property in Henrico County and been adversely affected, it affirmatively appears on the face of the Complaint that Sylvia Coleman, R. Kent Willis, and Housing Opportunities Made Equal and the latter's members do not have claims which are typical of the claims of the plaintiff class, cannot fairly and adequately protect the interests of the plaintiff class, and do not have interests which are coextensive with those of the plaintiff class. Defendants accordingly state that, insofar as they seek to proceed in class action form, the plaintiffs Sylvia Coleman, R. Kent Willis, and HOME do not state a claim upon which class relief may be granted.

7. With regard to the class action issue, this leaves the question of whether the plaintiff Paul Allen Coles may prosecute his Complaint in class action form. Should his Complaint be certified as a class action, and should this case result in an outcome adverse to Mr. Coles, it is evident that the rights of all of the members of the alleged class may be adversely affected. Unlike the other individual plaintiffs, Mr. Coles bases his complaint upon only one individual act of alleged discrimination, described in the

allegations in paragraph 12 of the Complaint. Having failed to rent the apartment he desired on July 13, 1978, Mr. Coles does not allege in his Complaint that he took any further steps to try again; rather, based upon that single incident, he seeks to impose upon the defendants liability for substantial damages, injunctive and affirmative relief, and to represent a large class of persons in so doing. Further, having apparently sought on only one occasion to rent an apartment from the defendants, it appears questionable that the plaintiff Paul Allen Coles can demonstrate the existence of the patterns and practices of which he and his fellow plaintiffs generally complain in their Complaint. Accordingly, insofar as he seeks to proceed in the class form, the Complaint of Paul Allen Coles fails to state a claim upon which relief in class form may be granted.

8. Finally, in order to proceed with their action in class form the plaintiffs must show that they can fairly and adequately protect the interests of the plaintiff class they undertake to represent. If, as the defendants have stated above, the plaintiffs other than the plaintiff Coles have filed their action after the expiration of 180 days from the incidents concerning which they complain, then it appears from the face of the Complaint that those plaintiffs and their attorneys are incapable of fairly and adequately protecting their own interests herein, much less the interests of the plaintiff class they undertake to represent. Accordingly, and in the absence of adequate strategic or other explanation for the delay in filing the Complaint herein until after 180 days following the last incident concerning which Complaint is raised herein, this Honorable Court should find that, insofar as it seeks to proceed in class form, the Complaint of the plaintiffs Coleman, Willis, and HOME fails to state a claim upon which class relief can be granted.

ANSWER

The defendants, by counsel, without waiving the Motions to Dismiss set forth hereinabove, for their Answer to the numbered paragraphs of the Complaint herein state as follows:

9. Insofar as paragraph 1 alleges wrongdoing on the part of the defendants, it is denied.

10. Defendants lack sufficient knowledge to admit or deny the allegations of paragraph 2 with regard to the identity of the plaintiffs, and thus deny same. Defendants deny that any act of theirs has unlawfully and adversely affected any of the plaintiffs herein.

11. Defendants deny that they have committed any wrong to the plaintiffs or to any other persons in the alleged class which they represent, and thus deny the allegations of paragraph 3 that that class is so numerous that joinder of all members is impracticable.

12. Defendants deny the allegation of paragraph 4 that they have violated the cited statutes and engage in the practice of racial steering, and lack sufficient knowledge to admit or deny the remaining allegations, and thus deny all of the allegations of paragraph 4.

13. The allegations of paragraphs 5 and 6 of the Complaint are denied.

14. With regard to the allegations of paragraph 7 of the Complaint, defendants deny that they have injured any of the plaintiffs by any discriminatory act, and lack sufficient knowledge to admit or deny the remaining allegations, and thus deny all of the allegations of paragraph 7.

15. Defendants lack sufficient knowledge to admit or deny the allegations of paragraph 8 and thus deny same. Defendants further state that HOME lacks standing to assert any claim herein.

16. The allegations of paragraph 9 of the Complaint are admitted.

17. Defendants deny the allegation of the last sentence of paragraph 10 and lack sufficient knowledge to admit or deny the remaining allegations, and thus deny all such allegations.

18. The allegations of paragraph 11 are denied.

19. In response to the allegations of paragraph 12 of the Complaint, defendants admit that Camelot Townhouses and Colonial Court Apartments are both apartment complexes predominantly occupied by whites, but defendants state that both complexes are racially integrated. The remaining allegations of paragraph 12 are denied.

20. The defendant Havens Realty Corporation denies the allegation of paragraph 13. The defendant Rose Jones states that at this time she has no specific recollection of any of the contacts concerning which allegations are made in paragraph 13, that she has not knowingly misrepresented the status or availability of any apartment unit on the occasions alleged, and she therefore denies the allegations of paragraph 13.

21. The allegations of paragraphs 14, 15, 16, 17, and 18 of the Complaint are denied.

22. The assertions contained in numbered paragraphs 1 through 8 of this pleading, hereinabove, are hereby reincorporated herein by this reference as if set forth verbatim, and the defendants assert the matters stated in each of the said paragraphs as affirmative defenses to the allegations of the Complaint herein.

23. Defendants deny that they have been guilty of any discriminatory act, pattern or practice as set forth in the Complaint.

24. Defendants deny that they are indebted to plaintiffs, or any of them, in any amount, by way of compensa-

tory or punitive damages, attorneys fees, or other monetary sums, and further deny that they are liable for any other form of relief, injunctive or otherwise.

25. Defendants reserve the right to amend this pleading if at any time they be so advised up to and including the trial of this action.

WHEREFORE, the defendants demand that the action filed against them be dismissed and that they be awarded their costs of court expended herein.

HAVENS REALTY CORPORATION
AND ROSE JONES
By: /s/ RICHARD W. HOGAN
Of Counsel

Richard W. Hogan
Hirschler, Fleischer, Weinberg,
Cox & Allen
Second Floor, Massey Building
Fourth and Main Streets
P. O. 12085
Richmond, VA 23241

CERTIFICATE OF SERVICE

This is to certify that on the 31st day of January, 1979, a true copy of the foregoing Defendants' Pleadings in Response to Complaint Motions to Dismiss and Answer was hand delivered to James F. Stutts, Esq., Suite 1506, 700 Building, 700 East Main Street, Richmond, Virginia 23219, Counsel for the plaintiffs; also on this day a true copy of the foregoing pleading was mailed to Theodore C. Hirt, Esq., Fried, Frank, Harris, Shriver, & Kampelman, 600 New Hampshire Avenue, NW, Suite 1000, Washington, D.C. 20037, also counsel for the plaintiffs.

/s/ RICHARD W. HOGAN

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

PAUL ALLEN COLES, SYLVIA COLEMAN,
R. KENT WILLIS, and on behalf of all others
similarly situated, and
HOUSING OPPORTUNITIES MADE EQUAL,
a Virginia Corporation

Plaintiffs,

v.

HAVENS REALTY CORPORATION,
a Virginia Corporation and
ROSE JONES,

Defendants.

Civil Action No. 79-0024

DEFENDANTS' BRIEF IN SUPPORT OF MOTIONS TO DISMISS

The defendants, by counsel, pursuant to Rule 11(F) of the Local Rules of Practice of this court, submit the following in support of their motions to dismiss the Complaint herein:

The motion filed herewith contains a concise statement of the facts pertinent to each theory and supporting reasons. The citations of authorities upon which the movants rely are as follows (paragraph numbers correspond with those of the Motions to Dismiss):

1. 42 U.S.C. § 3612(a); *Hickman v. Fincher,* 483 F.2d 855 (4th Cir. 1973).
   Stingley v. City of Lincoln Park, 429 F.Supp. 1379, 1390-91 (DC ED Mich 1977).

2. *Warth v. Seldin*, 422 U.S. 490, 45 L.E. 2d 343, 95 S.Ct. 2197 (1975).
   TOPIC v. Circle Realty, 532 F. 2d 1273 (9th Cir. 1976) See also, as to standing under Civil Rights Act of 1866, *Trafficante v. Metropolitan Life Ins. Co.*, 446 F.2d 1158 (9th Cir. 1971), rev'd on other grounds 409 U.S. 205, 34 L.E. 2d 415, 93 S.Ct. 364.
3. FRCP 8(a).
4. *Jackson v. Dukakis*, 526 F.2d 64 (1st Cir. 1975).
   Evans v. Lynn, 537 F.2d 571 (2nd Cir. 1975).
   TOPIC v. Circle Realty, supra.
5. *Jackson v. Dukakis*, supra.
   Evans v. Lynn, supra.
   TOPIC v. Circle Realty, supra.
6. FRCP 23.
   Thaxton v. Vaughan, 321 F.2d 474 (4th Cir. 1963).
   Doctor v. Seaboard Coastline, 540 F.2d 699 (4th Cir. 1976).
7. FRCP 23.
8. FRCP 23.
   Cabrera v. Board of Elections, 350 F. Supp. 25 (DC NJ 1972).

HAVENS REALTY CORPORATION
AND ROSE JONES

By: /s/ RICHARD W. HOGAN
Of Counsel

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Hirschler, Fleischer, Weinberg,
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Second Floor, Massey Building
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P. O. 12085
Richmond, VA 23241

CERTIFICATE OF SERVICE

This is to certify that on the 31 day of January, 1979, a true copy of the foregoing Defendants' Brief in Support of Motions to Dismiss was hand delivered to James F. Stutts, Esquire, Suite 1506, 700 Building, 700 East Main Street, Richmond, Virginia 23219, Counsel for the plaintiffs; also on this day a true copy of the foregoing pleading was mailed to Theodore C. Hirt, Esquire, Fried, Frank, Harris, Shriver, & Kampelman, 600 New Hampshire Avenue, NW, Suite 1000, Washington, D. C. 20037, also counsel for the plaintiffs.

/s/ RICHARD W. HOGAN

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

PAUL ALLEN COLES, et al

v.

HAVENS REALTY CORPORATION, et al

Civil Action No. 79-0024-R
Filed Feb. 16, 1979
Clerk, U. S. Dist. Court
Richmond, Va.

ORDER

In accordance with the memorandum this day filed, the claims of plaintiffs Sylvia Coleman, R. Kent Willis, and Housing Opportunities Made Equal are hereby DISMISSED for failure to state a claim on which relief may be granted. In all other respects, defendants' motion to dismiss filed 31 January 1979 is hereby DENIED.

Let the Clerk send a copy of this order and memorandum to all counsel fo [sic] record.

/s/ D. DORTCH WARRINER
United States District Judge

Date: 16 February 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

PAUL ALLEN COLES, et al

v.

HAVENS REALTY CORPORATION, et al

Civil Action No. 79-0024-R
Filed Feb. 16, 1979
Clerk, U. S. Dist. Court
Richmond, Va.

MEMORANDUM

This matter is before the Court on defendants' motion to dismiss of 31 January 1979. The time allotted by the Local Rules for plaintiffs' reply to this motion has expired, and plaintiffs have not responded by memorandum or otherwise. Accordingly, the motion is now ripe for disposition. The defendants' motion has several parts, each of which will be considered separately.

Defendants state that all of plaintiffs' claims but one are based on acts of discrimination which occurred more than 180 days before the filing of the complaint in this case. Accordingly, defendants argue, all claims under the Fair Housing Act of 1968 except that based on the alleged discriminatory act on 13 July 1978 are barred by the applicable statute of limitations, 42 U.S.C. § 3612(a). This claim is well taken, and the action will be dismissed as to all barred claims. The Court notes that none of plaintiffs' claims are time-barred under the two-year statute of limitations applicable to 42 U.S.C. § 1982.

Defendants argue that the corporate plaintiff, Housing Opportunities Made Equal (HOME) is not a proper party

plaintiff to this law suit. The Court believes that the law is clear that HOME is not a proper party to this action and cannot be accorded any relief by this Court. *Warth v. Seldin*, 422 U.S. 490 (1975); *TOPIC v. Circle Realty*, 532 F.2d 1273 (9th Cir. 1976). Accordingly HOME will be dismissed as a party plaintiff.

Defendants claim that the "tester" plaintiffs (Coleman and Willis), the persons who allegedly sought to rent from defendants in order to prove a pattern of discrimination, have suffered no injury and thus are entitled to no relief. Plaintiffs' complaint makes it clear that Coleman and Willis did not attempt in good faith to rent residential property from any defendant, but instead sought only to develop evidence for use in this law suit. Their action seeks to vindicate the rights of third parties, dispite [sic] their allegation of deprivation of benefits from interracial associations. In asserting the claim based on these deprivations, Coleman and Willis assert no more than the general public interest. Furthermore, there is no allegation that absent the defendants' discriminatory practices, Coleman and Willis would reside in intergrated [sic] communities. Thus, Coleman and Willis must be dismissed as parties plaintiff.

Defendants argue that none of the plaintiffs allege that they actually offered to rent an apartment from any defendant, and thus may not maintain an action or [sic] denial of rental housing. However, the gravamen of plaintiffs' complaint is that when black persons inquired as to vacancies, they were told that none existed. Under these circumstances, no affirmative offer to rent need be shown in order to state a claim.

Defendants suggest that Coleman, Willis, and HOME are not proper class representatives. The Court's ruling that these plaintiffs' claims be dismissed make it unnecessary to consider this claim. However, the Court does not agree that

plaintiff Coles cannot represent a class merely because his claim is based on a single individual act of discrimination. Further, while plaintiffs' failure to file their complaint herein until some claims had been time-barred—and their failure to respond to defendants' motion and brief—are indications that plaintiffs may not adequately represent the interest of the class, these matters are ones for the Court to consider on a motion for class certification after there has been an opportunity for discovery of the question of class certification to determine the factual questions raised by defendants' contentions.

An appropriate order shall issue.

/s/ D. DORTCH WARRINER
United States District Judge

Date: 16 February 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

PAUL ALLEN COLES, SYLVIA COLEMAN, R. KENT WILLIS, and on behalf of all others similarly situated, and HOUSING OPPORTUNITIES MADE EQUAL, a Virginia Corporation,

Plaintiffs,

v.

HAVENS REALTY CORPORATION, a Virginia Corporation, and ROSE JONES,

Defendants.

Filed Feb. 16, 1979
Clerk, U. S. Dist. Court
Richmond, Va.
Civil Action No. 79-0024-R

MOTION TO RECONSIDER

Come now the platiniffs [sic] Sylvia Coleman, R. Kent Willis and Housing Opportunities Made Equal and move the Court to reconsider its Order herein dated February 16, 1979 dismissing the said plaintiffs' complaint and in support of their motion show unto the Court the following:

1. The plaintiffs filed their Complaint against the defendants with this Court on January 9, 1979.

2. On January 31, 1979 the defendants filed a Motion to Dismiss and an Answer in response to the said plaintiffs' Complaint.

3. Counsel for the defendants agreed to a request from

counsel for the plaintiffs to an extension of time to February 20, 1979 within which to file a brief in response to defendants' Motion to Dismiss.

4. Plaintiffs have prepared a Memorandum in response to defendants' Motion to Dismiss and are prepared to file the Memorandum with the Court in accordance with counsels' agreement.

Wherefore, the said plaintiffs pray the Court to reconsider its Order entered this date and to permit the plaintiffs to file a Memorandum in response to the defendants' Motion to Dismiss.

SYLVIA COLEMAN,
R. KENT WILLIS, and
HOUSING OPPORTUNITIES MADE EQUAL

By /s/ JAMES F. STUTTS
Counsel

I ask for this:

/s/ JAMES F. STUTTS
Attorney for plaintiffs

Seen:

/s/ RICHARD W. HOGAN
Attorney for defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

PAUL ALLEN COLES, et al.

Plaintiffs,

v.

HAVENS REALTY CORPORATION, et al.,

Defendants.

Filed Feb. 20, 1979
Clerk U.S. Dist. Court
Richmond, Va.
Civil Action No. 79-0024-R

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Plaintiffs hereby oppose the motion to dismiss, which defendants combined with their answer, filed herein on January 31, 1979. Defendants have not shown any basis for dismissal of any portion of the complaint, and they have not discussed nor explained the list of cases which they appended to this motion.

INTRODUCTION

This action was filed on January 9, 1979, by three individually-named plaintiffs, Paul Allen Coles, Sylvia Coleman and R. Kent Willis, and by one organizational plaintiff, Housing Opportunities Made Equal (HOME), against defendant Havens Realty Corporation and one of its employees, Ms. Rose Jones. Defendants manage and perform real estate brokerage services at two adjacent apartment

buildings in Henrico County, Virginia, namedly, Camelot Townhouses and Colonial Court Apartments. The individual plaintiffs sue as members of a class of individuals in the Richmond metropolitan area who have been (and continue to be) injured by defendants' practice of "racial steering," a form of racial discrimination which violates both the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 *et seq.*, and the Civil Rights Act of 1866, 42 U.S.C. § 1982. HOME, an organization which assists individuals of all races in obtaining housing in the Richmond metropolitan area, is joined as plaintiff because defendants' practices have injured it and frustrated its attempts to promote equal opportunity in housing. Plaintiffs seek both damages to compensate them for defendants' injury and an injunction which will assure defendants' future compliance with the aforementioned fair housing laws.

Defendants have moved to dismiss various portions of the complaint, including those portions which allege the propriety of a class action in this case. On February 1, 1979, defendants filed a notice of deposition as to each of the named plaintiffs and a request for production of documents.

Before discussing the legal issues raised by defendants' motion, it is important to review the relevant facts of this case. This action is a result of illegal practices engaged in by defendants in connection with their management and leasing of apartments at two adjacent apartment buildings in Henrico County. It is based on "racial steering," a practice by which real estate brokers like defendants perpetuate segregated housing patterns by channeling prospective renters to or away from particular rental units. Defendants have practiced racial steering at both of their apartment buildings, Camelot Townhouses, which plaintiffs believe is occupied exclusively by whites, and Colonial Court Apart-

ments, which plaintiffs believe is occupied exclusively or predominantly by whites.

From reports received by renters who sought HOME'S counseling services, HOME had suspected that defendants practiced racial steering. HOME performed several tests in the spring and summer of 1978 to determine the existence of such segregationist policies. As the complaint indicates (¶ 13), in each case a black tester was steered away from the apartments by defendants after being told that nothing was available, while a white tester visiting defendants' rental office at approximately the same time was told that apartments were available. On July 13, 1978, plaintiff Coles, a black man who had been looking for an apartment in Henrico County, was specifically told that nothing was available at Camelot Townhouses and was told to check at the Colonial Court Apartments office. In contrast, a white tester John Barr (employed by HOME, but not a named plaintiff in this case) inquired as to available rentals at Camelot Townhouses that same day, both by telephone and in person, and was told that an apartment was available in that building. While defendants deny the obvious conclusion compelled by these tests, plaintiffs believe that these incidents represent typical examples of a pattern of racial discrimination which probably extends backward in time for years and continues to this very day.

With the exception of defendants' class action allegations, which go to the merits of plaintiffs' claims and cannot be decided at this stage of the litigation, plaintiffs will respond here to each of the points made in the motion to dismiss.[1]

[1] Unless the Court requests that the parties brief the class action aspects of this case or require that plaintiffs move for certification at this point in time, plaintiffs believe that any such decision must be deferred pending discovery. It is established that a defendant's objection to class action statuts [sic] is premature prior to discovery. *Roman v. ESB, Inc.*, 550 F.2d 1343, 1348 (4th Cir. 1976); *Dillon v.*

Defendants' basic claim is that only plaintiff Coles has standing to sue in this case since the Complaint fails to allege that plaintiffs Willis and Coleman "have made any attempt in good faith to rent residential property from the defendants." (Motion to Dismiss, ¶ 4). Defendants' second claim as to standing is that HOME does not have standing in the absence of allegations that its members have sought to rent an apartment from defendants. Finally, defendants assert that the claims of plaintiffs Willis and Coleman are barred under the six month limitation period of the 1968 Fair Housing Act. Defendants do not ask and cannot ask that the complaint be dismissed as to plaintiff Coles.

ARGUMENT

I.

The Statute Of Limitations Has Not Run As To Any Of The Claims In This Case.

This action has been filed as a class action to redress defendants' persistent and ongoing practice of illegal racial steering. Plaintiffs contend that they "have suffered, are now suffering and will continue to suffer irreparable harm and injury by the unlawful policies and discriminatory practices of the defendants" (Complaint, ¶ 18) and have alleged a continuing pattern of discrimination by defendants (Complaint, ¶¶ 1, 4, 11 and 13).

Although defendants challenge the timeliness of the claims of plaintiffs Willis and Coleman under Title VIII of

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Bay City Construction Co., Inc., 512 F.2d 801, 804 (5th Cir. 1975); *Wilson* v. *Allied Chem. Corp.*, 75 F.R.D. 45, 47 (E.D. Va. 1977). As this Court stated, a claim that the prerequisites of a class action do not exist in a case "goes to the Court's determination as to whether a class action be declared. Prior to at least preliminary discovery, such an allegation is premature." *Burwell v. Eastern Airlines, Inc.*, 394 F.Supp. 1361, 1370 (E.D. Va. 1975).

the 1968 Act, which has a six-month limitation period, that argument must be rejected by the Court. It is clear that where a defendant has discriminated against an entire class and engages in a continuing course of discrimination, the statute of limitations is tolled by such wrongful acts. *Macklin* v. *Spector Freight Systems, Inc.*, 479 F.2d 979, 987 (D.C. Cir. 1973) (Title VII case); *Austin* v. *Reynolds Metal Co.*, 327 F.Supp. 1145, 1152 (E.D. Va. 1970) (Title VII case); *Burwell* v. *Eastern Airlines, Inc.*, 304 F.Supp. 1361, 1367 (E.D. Va. 1975) (Title VII case). This principle has been applied in one Circuit case involving continuing discrimination in the rental of housing, and should govern the disposition of this motion. *Baker* v. *F&F Investment Co.*, 420 F.2d 1191, 1200 (7th Cir. 1970), *cert. denied*, 400 U.S. 821 (1970); see also *Meyers* v. *Pennypack Woods Home Ownership Association*, 559 F.2d 894, 898 (3rd. Cir. 1977). As the Court stated in the *Baker* case, which involved a continuing pattern of discrimination by lenders and realtors against blacks with regard to purchases of homes:

> Plaintiffs have alleged wrongs committed by defendants which continue during the entire lives of the individual purchase contracts. They have alleged a conspiracy among defendants, the object of which was the establishment of a continuing relationship with individual plaintiffs. That relationship, by the same token, constituted a prolonged and continuing invasion of the rights of the purchasers. As in *Hazeltine Research, Inc.* v. *Zenith Radio Corporation*, 418 F.2d 21 (7th Cir. 1969), the limitations periods commence to run from the last overt act of the conspiracy, permitting plaintiffs to recover "for damages suffered within the damage period as a result of an overt act repetitious of the unlawful pre-[limitation] period acts occurring in the damage period" (418 F.2d at p. 25).

Accordingly, defendants' attempt to have plaintiffs Willis and Coles eliminated either as plaintiffs or as class representatives must fail.[2] The claims of both individuals are timely under both statutes and requires the denial of defendants' motion as to this aspect of the complaint.

II.

These "Tester" Plaintiffs Have Standing To Sue Because Defendants' Illegal Racial Steering Practices Not Only Injure Blacks, The Direct And Intended Victims Of Defendants' Discriminatory Actions, But Also Injure All Individuals Interested In Racially Integrated Communities.

Tester plaintiffs R. Kent Willis, a white man, and Sylvia Coleman, a black woman, have standing to sue under both the Fair Housing Act of 1968 and the Civil Rights Act of 1866, consistent with the general Article III "case or controversy" requirements which govern standing. These individuals have been denominated "tester plaintiffs," because they each have contacted defendants in the course of their employment by HOME to determine if defendants violate the Fair Housing Laws of the United States. However, these plaintiffs do not sue as "testers," but as individuals (and representatives of a larger class) who believe that the benefits of integrated communities inure to whites and blacks

[2] Defendants must concede that plaintiff Coleman's complaint is not barred under the two year limitation period of 42 U.S.C. § 1982. Although plaintiffs did not specifically plead that statute as to plaintiff Willis, he would be a proper plaintiff under that statute. Because of defendants' apparent questioning of Willis' ability to represent white plaintiffs under 42 U.S.C. § 3612, plaintiffs are willing, should the Court so desire, to amend the complaint in order to add white tester John Barr as a named plaintiff. Such an amendment would eliminate any uncertainty as to whether whites injured by defendants' practices require an individual representative whose claims are identical in all respects.

alike, and who are injured by defendants' racial steering practices, practices which preserve segregated neighborhoods (in this case segregated apartment complexes) because such illegal practices deprive them of the important benefits of interracial associations. (Complaint, ¶¶ 14 and 15).

Contrary to defendants' argument on this issue, the cases on standing under various civil rights statutes generally have held that plaintiffs such as Willis and Coleman have the requisite standing to complain about civil rights violations. The leading case on this point (not cited by defendants) is *Village of Bellwood* v. *Gladstone Realtors,* 569 F.2d 1013 (7th Cir.), *cert. granted,* 46 U.S.L.W. 3765 (June 7, 1978), now awaiting a decision by the Supreme Court. In *Bellwood, supra,* various village residents sued defendant realtors for "steering" prospective home buyers to various neighborhoods based upon their race. None of the residents (four were white and two were black) were a *bona fide* home seeker, but each asserted in their complaints that they had been denied "their right to select housing without regard to race and have been deprived of the social and professional benefits of living in an integrated society." Each of the individual plaintiffs had posed as a prospective home buyer when visiting defendants; "none were making bona fide efforts to purchase homes in the affected area." 569 F.2d at 1015.

The Seventh Circuit held that these "tester" plaintiffs had thereby demonstrated the requisite "injury in fact" under cases such as *Baker* v. *Carr,* 369 U.S. 186 (1962). The Court had no doubt that the complaints satisfied the basic requirement of standing—"that the plaintiff must show actual or threatened injury to himself that is likely to be redressed or avoided by a favorable decision." It also con-

cluded that the rights asserted by these plaintiffs were within the "zone of interest" protected by the 1968 Fair Housing Act. It expressed its strong disagreement with a contrary view expressed in *TOPIC* v. *Circle Realty*, 532 F.2d 1273 (9th Cir. 1976), *cert. denied*, 429 U.S. 859 (1976), which improperly had construed various provisions of the 1968 Fair Housing Act to deny standing to tester plaintiffs. The *Bellwood* court did not consider whether standing would be conferred also by the 1866 Civil Rights Act.

Although defendants rely on the *TOPIC* case for their contention that tester plaintiffs do not have standing, it should be noted that the *TOPIC* decision has been severely criticized by courts which have passed on this issue. *See e.g. Wheatley Heights Neighborhood Coalition* v. *Jenna Resales Co.*, 429 F.Supp. 386, 491 (E.D. N.Y. 1977). Plaintiffs will not review here the arguments in the *TOPIC* case, except to note one of the fundamental flaws in the decision, criticized by subsequent decisions. That Court, in reviewing the statutory framework of the 1968 Act, properly noted that two distinct forms of relief were available under that statute to those injured by discriminatory housing practices—a direct action in the federal courts under 42 U.S.C. § 3612 or resort to administrative remedies through the Department of Housing and Urban Development or an appropriate state agency under 42 U.S.C. § 3610. It then held that, in view of the language used in section 3610, which authorized relief to any "person aggrieved" under the Act, those white individuals who were "indirectly" injured by discrimination were relegated to the administrative remedy and so were barred from pursuing a court action. However, nowhere did the *TOPIC* court indicate any basis, either in the language or legislative history of the 1968 Act, which supported that conclusion. See *Village of Bellwood* v. *Glad-*

stone Realtors, supra, 469 F.2d at 1019. The reasoning of the *TOPIC* decision certainly renders it inapplicable to this case.[3]

Defendants' apparent reliance on *Trafficante* v. *Metropolitan Life Insurance Company,* 409 U.S. 205 (1972), to support their claim that the "tester plaintiffs" lack standing also is misplaced since it directly contradicts that claim. In *Trafficante,* a case brought under the Fair [sic] U.S.C. § 1982, both a black and a white tenant of a San Francisco apartment complex sued the apartment owner-operator, alleging that it was engaged in discriminatory housing practices and had maintained a "white ghetto," and deprived both plaintiffs of their right to live in a racially integrated community, with its attendant social, political and other benefits. The Supreme Court unanimously reversed the Ninth Circuit's holding that the 1968 Act was limited to complaints brought by persons who were the direct objects of discriminatory housing practices. With respect to private lawsuits brought under the 1968 Act, the Court concluded that Congress had intended to define standing as broadly as permitted by the Constitution, and stated that the injury to existing tenants in the complex was "the loss of important benefits from interracial associations." 409 U.S. at 209-210.[4] The Court had no difficulty in concluding that the complaint presented a live dispute "in an adversary context." As it concluded:

[3] It is not clear if defendants also base their standing argument on the *TOPIC* Court's discussion of "indirect" injury—its holding that the interest in living in an integrated community was too attenuated when applied to a large area of metropolitan Los Angeles. It is important to recognize here, as in the *Trafficante* case discussed herein, that defendants' discriminatory practices are apparently limited to two apartment complexes in a discrete geographic area, but result in discriminatory impact beyond those buildings.

[4] The Court found it unnecessary to determine whether standing existed under 42 U.S.C. § 1982, 409 U.S. 209 n. 8, but the majority gave no indication that its result would be different under that statute.

> Injury is alleged with particularity, so there is not present the abstract question raising problems under Art III of the Constitution. The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, "the whole community," 114 Cong Rec 2706, and as Senator Mondale who drafted § 810(a) said, the reach of the proposed law was to replace the ghettos "by truly integrated and balanced living patterns." 114 Cong Rec 3422.

409 U.S. at 211.

This case is distinguishable from *Trafficante, supra,* insofar as no named plaintiff now lives in either of the two apartment complexes managed by defendants. However, the tester plaintiffs sue in this case (as does plaintiff Coles) on behalf of that class of persons who wish to enjoy the benefits of living in a racially integrated community, but who are injured by defendants' practices which cause injury far beyond the immediate impact they have as to maintaining two segregated housing complexes. Defendants cannot deny standing to these representative plaintifs [sic] because their racially exclusionary policies are so covert, and so far so successful, that the present white tenants in the Camelot Townhouses and Colonial Court Apartments do not know of defendants' illegal practices. Plaintiffs expect that discovery and notice to class members will eliminate defendants' objections to standing and demonstrate that defendants' practices also directly injure the white (and black, if any) tenants of the two apartment buildings at issue here. As the Seventh Circuit declared in the *Bellwood* case: "Racial steering, by its nature, is a subtle form of discrimination that is difficult if not impossible to prove otherwise than by comparing the areas to which homeseekers of different races are directed." 569 F.2d at 1016. Nor can defendants prevail

by simply labeling plaintiffs' allegations as not presenting a "substantial injury." (Motion to Dismiss, ¶ 6).

Plaintiffs assert the denial of specific rights and benefits as a result of defendants' actions; there is a nexus between their injury and acts, and affirmative relief is likely to benefit plaintiffs (and those whom they represent) by extending the benefits of racially integrated housing to those denied it.[5] The fact that defendants may object to "meddling" by these tester plaintiffs cannot be allowed to obscure defendants' desire to prevent any scrutiny of their discriminatory practices.

An independent basis for standing exists for plaintiffs Willis and Coleman, 42 U.S.C. § 1982. While few decisions have discussed the standing issue under the 1866 Civil Rights Act, no sound reason exists which would deny standing to the plaintiffs under that statute. The Third Circuit, in the recent case of *Meyers* v. *Pennypack Woods Home Ownership Association*, 559 F.2d 894, 898 (3rd. Cir. 1977), stated that a black plaintiff "tester" would have standing under 42 U.S.C. § 1982. In the course of its opinion, the Court cited with approval a series of Supreme Court and Court of Appeal opinions which conferred standing upon testers in other forms of civil rights litigation. For instance, in *Smith* v. *Young Men's Christian Association of Montgomery, Inc.*, 462 F.2d 634, 645-646 (5th Cir. 1972), the Court held that blacks who applied for YMCA member-

[5] Defendants' citation of *Evans* v. *Lynn*, 537 F.2d 571 (2d Cir. 1976) has no relevance to this case. There the residents of one community sued governmental officials for their alleged failure to undertake improvement projects in another part of the metropolitan area. The majority held that standing properly was denied since the plaintiffs alleged no specific adverse results to themselves as a result of defendants' actions and that even if the grants were approved for the potential projects, it was pure speculation that the monies would be devoted to a project which might make housing more available to plaintiffs.

ship solely in the attempt to integrate it had standing to complain about its segregation.

In *Evers* v. *Dwyer*, 358 U.S. 202, 204 (1958), the Supreme Court held that a black who boarded a bus and sat in the "white only" section solely in order to test the legality of the bus company's policy had standing to sue and presented "the existence of a live controversy" warranting declaratory relief. As the Court concluded: "That the appellant may have boarded this particular bus for the purpose of instituting this litigation is not significant." Finally, the Fourth Circuit, in a case challenging discriminatory employment policies, affirmed a decision that black women in a class action who applied for jobs at a segregated factory had standing to sue even though their motive in applying for positions was to test defendant's employment practices rather than seek actual employment. *Lea* v. *Cone Mills Corporation*, 438 F.2d 86 (4th Cir. 1971).

In this case, the tester plaintiffs have stated injury caused by defendants' racial steering, the loss of the benefits of living in racially integrated communities. Furthermore, as to plaintiff Coleman, a black woman, it is clear from the complaint in this case that she is a direct victim of discrimination —she was denied an opportunity to lease an available apartment solely because of her race. This Court, therefore, should hold that both tester plaintiffs have standing in this case.

III.

Housing Opportunities Made Equal (HOME) Has Standing To Sue In This Case As An Organization Whose Efforts To Promote Integration In Housing Have Been Hindered By Defendants' Illegal Practices.

Defendants' basic allegation as to HOME's alleged lack of standing is their claim "that the Complaint fails to allege

any remediable wrong against the corporation itself." Defendants also allege that the complaint is defective because it does not state that HOME's members reside in (or have sought to reside in) defendants' two apartment complexes or that such members live in Henrico County. (Motion to Dismiss, ¶ 2). Defendants' summary argument should be rejected by this Court since HOME has demonstrated "injury in fact", injury which directly affects its corporate operations and frustrates one of its basic purposes. (Complaint, ¶ 8).

The law of standing requires that the plaintiff "alleg[e] such a personal stake in the outcome of the controversy" as to justify its invocation of federal court jurisdiction and to warrant the court's exercise of its remedial powers on plaintiff's behalf. *Baker* v. *Carr*, 369 U.S. 186, 204 (1962). In determining whether standing exists, a court "must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party . . ." *Warth* v. *Selden*, 422 U.S. 290 [sic], 501 (1975).

In this case, HOME has satisfied the test for standing. It has established that, as an organization dedicated to increasing housing opportunities for all individuals in the Richmond Metropolitan Area, it has undertaken various efforts to make equal opportunity in housing a reality. Such efforts include operation of a housing counselling service and investigating whether racial discrimination in housing exists. This has resulted in its conducting of "tests" to determine whether black and white applicants for rentals are treated differently—a result it found in this case. HOME also has alleged, and the court must accept as true for the purpose of defendants' motion, that defendants' actions have interfered with its efforts to make housing available to minorities in the Richmond area. (Complaint, ¶ 6).

These facts alone should establish HOME's standing, for it has demonstrated "injury in fact," an injury directly attributable to defendants' illegal practices.[6] Defendants' citation to *Warth* v. *Selden, supra,* which involved exclusionary zoning practices, does not suggest a contrary conclusion. In that case, various individuals and several groups sued a suburban town for its alleged exclusion of law [sic] and middle income families. The Court held that a nonprofit organization, Metro-Act, could not sue on behalf of its members, town residents who allegedly were injured by defendants' zoning policies. Unlike HOME in this case, Metro-Act did not assert any injury to itself caused by these policies, so the Court only had before it the question of Metro-Act's right to enforce the rights of third parties. 422 U.S. at 512-514. HOME has alleged direct injury to itself (Complaint, ¶ 14), an injury which establishes its independent right to invoke federal court jurisdiction.[7]

Defendants do not cite a case decided by the Supreme Court after *Warth* v. *Selden, supra,* where it held that a nonprofit corporation interested in furnishing housing to low income families had standing to complain about a village's exclusionary zoning policies. In *Village of Arlington Heights* v. *Metropolitan Housing Development Corporation,* 429 U.S. 252 (1977), it stated that the corporation's injury was

[6] Since defendants have declared their intention to depose a designated official of HOME on February 27, 1979, it is likely that further factual support for HOME's standing will be available for this Court's consideration. Accordingly, plaintiffs respectfully request that any ruling on this point be deferred pending this discovery.

[7] Defendants suggest that HOME is really suing only on behalf of its members and then claim that no showing exists that HOME members have sought housing from defendants (Motion to Dismiss, ¶ 2). This avoids the real issue—whether white and black citizens may complain about the denial to them of the right to live in racially integrated communities. This injury exists whether or not such citizens have made application to live in a particular building or complex.

not limited to the fact that it had incurred financial costs as a result of defendant's acts, and noted that "[i]t has long been clear that economic injury is not the only kind of injury that can support a plaintiff's standing." As the Court concluded:

> MHDC is a nonprofit corporation. Its interest in building Lincoln Green stems not from a desire for economic gain, but rather from an interest in making suitable low-cost housing available in areas where such housing is scarce. This is not mere abstract concern about a problem of general interest.*** The specific project MHDC intends to build, whether or not it will generate profits, provides that "essential dimension of specificity" that informs judicial decisionmaking. [citations omitted.] 429 U.S. at 263.

The standing of organizations like HOME has been established in a number of recent cases. In *Park View Heights Corporation* v. *City of Black Jack*, 467 F.2d 1208, 1213-1214 (8th Cir. 1972), the Eighth Circuit held that two nonprofit corporations concerned with developing low and moderate income housing had standing to challenge a restrictive zoning ordinance. It noted the interest of the corporations and the identity of interests between the corporations and the residents it represented—both desired to "be free from discriminatory housing practices." Similarly, in *Heights Community Congress* v. *Rosenblatt Realty, Inc.*, 73 F.R.D. 1, 3-4 (N.D. Ohio 1975), an organization comparable to HOME was held to have standing where it alleged that "the conduct of the defendant directly obstructs, frustrates and damages the [plaintiff] in achieving its objective by impeding the processes which are used to benefit the entire community of Cleveland Heights..." The Court had no difficulty in finding standing under the strong language

in the *Trafficante* case, *supra*, regarding the importance of the benefits from interracial associations. See also *English* v. *Town of Huntington*, 335 F.Supp. 1369 (E.D. N.Y. 1970) (holding that township committee on human relations had standing to sue in action claiming denial of equal protection and failure of township officials to comply with requirement to provide housing to persons displaced by urban renewal project.)

Based on these authorities, there should be no doubt in this case that HOME has standing. The injury suffered by HOME as a result of defendants' actions is "likely to be redressed by a favorable decision," *Village of Arlington Heights* v. *Metropolitan Housing Development Corporation*, *supra*, 429 U.S. at 261, since a program of reporting by defendant of available rentals and monitoring of such disclosure as the Court may deem appropriate will eliminate one obstacle to HOME's counselling and other programs which now exists—the secretive "steering" on the basis of race. HOME's standing therefore should be upheld by this Court.

IV.
CONCLUSION

For each of the foregoing reasons, defendants' motion to dismiss should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Memorandum of Law in Opposition to Defendants' Motion to Dismiss was mailed postage prepaid to Richard W. Hogan, Hirschler, Fleischer, Weinberg, Cox & Allen, Second Floor Massey Building, Fourth and Main Streets, Richmond, Virginia 23241 on this 20th day of February, 1979.

/s/ JAMES F. STUTTS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

PAUL ALLEN COLES, et al

v.

HAVENS REALTY CORPORATION, et al

Filed Feb. 22, 1979
Clerk, U. S. Dist. Court
Richmond, Va.
Civil Action No. 79-0024-R

ORDER

As is made clear by Local Rule 11(F) and (P), applications for extensions of time are granted by the Court, not by opposing counsel. Accordingly, the motion of plaintiffs Coleman, Willis, and Housing Opportunities Made Equal to reconsider, filed herein on 16 February 1979, is DENIED and the brief tendered on 20 February 1979, and mistakenly marked "filed" by the Clerk, will not be considered.

And it is so ORDERED.

Let the Clerk send a copy of this order to all counsel of record.

/s/ D. DORTCH WARRINER
United States District Judge

Date: 22 February 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

PAUL ALLEN COLES, SYLVIA COLEMAN,
R. KENT WILLIS, and on behalf of all others
similarly situated, and
HOUSING OPPORTUNITIES MADE EQUAL,
a Virginia Corporation,

Plaintiffs,

v.

HAVENS REALTY CORPORATION,
a Virginia Corporation, and
ROSE JONES,

Defendants.

Filed Mar. 5, 1979
Clerk, U. S. Dist. Court
Richmond, Va.
Civil Action No. 79-0024-R

MOTION FOR ENTRY OF FINAL JUDGMENT

Plaintiffs Sylvia Coleman, R. Kent Willis and Housing Opportunities Made Equal, by counsel, move the Court pursuant to Rule 54(b) of the Federal Rules of Civil Procedure to enter final judgment on the defendants' Motion to Dismiss the claims of these plaintiffs. In support of their motion defendants show unto the Court the following:

1. By order dated and entered February 16, 1979, this Court dismissed the claims of these plaintiffs for failure to state a claim upon which relief may be granted.

2. In its Memorandum dated February 16, 1979, the Court reasoned that these plaintiffs lacked standing to institute this action and that certain of plaintiffs' claims under

the Fair Housing Act of 1968 are barred by the statute of limitations.

3. The issues of standing of various classes of plaintiffs in fair housing actions and the applicable time period for the running of the statute of limitations in actions alleging continued acts of racial discrimination have not been resolved uniformly among the Courts of Appeals. The issue of standing of tester plaintiffs awaits disposition this term by the United States Supreme Court in the case of *Village of Bellwood* v. *Gladstone Realtors*, 569 F.2d 1013 (7th Cir.), *cert. granted*, 46 U.S.L.W. 3765 (June 7, 1978).

4. These plaintiffs believe that an appeal on the issues of standing and the statute of limitations will not delay the present proceedings regarding the defendants' liability, nor prejudice the defendants in any way, and that in the interest of justice the Court of Appeals should be permitted to rule upon these issues.

WHEREFORE, the aforesaid plaintiffs move the Court to enter a final judgment as to these plaintiffs, noting that there is no just reason for delay of entry of final judgment.

SYLVIA COLEMAN,
R. KENT WILLIS,
and on behalf of all others
similarly situated, and
HOUSING OPPORTUNITIES MADE
EQUAL, a Virginia corporation

By /s/ JAMES F. STUTTS
JAMES F. STUTTS
McSWEENEY AND STUTTS
1506 700 Building
700 East Main Street
Richmond, Virginia 23219

Seen:

/s/ RICHARD W. HOGAN
Attorney for defendants
Hirschler, Fleischer, Weinberg,
Cox & Allen
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Fourth and Main Streets
Richmond, Virginia 23219

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

PAUL ALLEN COLES, SYLVIA COLEMAN,
R. KENT WILLIS,
and on behalf of all others similarly situated, and
HOUSING OPPORTUNITIES MADE EQUAL,
a Virginia Corporation,

Plaintiffs,

v.

HAVENS REALTY CORPORATION,
a Virginia Corppration [sic],
and ROSE JONES,

Defendants.

Filed Mar. 7, 1979
Clerk, U.S. Dist. Court
Richmond, Va.
Civil Action No. 79-0024-R

ORDER FOR FINAL JUDGMENT

On the prior Order of this Court, dated and entered February 16, 1979, it appearing to the Court that there is no just reason for delay in entering final judgment on Defendants' Motion to Dismiss the Claims of plaintiffs, Sylvia Coleman, R. Kent Willis and Housing Opportunities Made Equal it is, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure,

ORDERED that a final judgment be entered herein that the claims of these plaintiffs are dismissed.

/s/ D. DORTCH WARRINER
United States District Judge

Date: 6 March 1979

Seen:

/s/ RICHARD W. HOGAN
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I ask for this:

/s/ JAMES F. STUTTS
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

PAUL ALLEN COLES, SYLVIA COLEMAN,
R. KENT WILLIS,
and on behalf of all others similarly situated, and
HOUSING OPPORTUNITIES MADE EQUAL,
a Virginia Corporation,

Plaintiffs,

v.

HAVENS REALTY CORPORATION,
a Virginia Corporation
and ROSE JONES,

Defendants.

Filed Mar. 15, 1979
Clerk, U.S. Dist. Court
Richmond, Va.
Civil Action No. 79-0024-R

NOTICE OF APPEAL

Notice is hereby given that Sylvia Coleman, R. Kent Willis, and Housing Opportunities Made Equal, hereby appeal to the United States Court of Appeals for the Fourth Circuit from the final judgment entered in this action dismissing the claims of these plaintiffs on the 6th day of March, 1979. An Order dismissing the claims of these plaintiffs was entered February 16, 1979.

SYLVIA COLEMAN,
R. KENT WILLIS,
HOUSING OPPORTUNITIES MADE EQUAL
By /s/ JAMES F. STUTTS
Counsel

JAMES F. STUTTS
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1506 700 Building
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Richmond, Virginia 23219
Counsel for Plaintiffs

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-1199

PAUL ALLEN COLES,

Plaintiff,

AND

SYLVIA COLEMAN, R. KENT WILLIS,
and on behalf of all other similarly situated,
and HOUSING OPPORTUNITIES MADE EQUAL,
a Virginia Corporation,

Appellants,

v.

HAVENS REALTY CORPORATION,
a Virginia Corporation, and ROSE JONES,

Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Virginia. D. Dortch Warriner, District Judge.

Argued: January 10, 1980 Decided: September 18, 1980

Before FIELD, Senior Circuit Judge, HALL and SPROUSE, Circuit Judges.

Vanessa Ruiz (Daniel M. Singer, Theodore C. Hirt, Dennis J. Riley, Fried, Frank, Harris, Shriver & Kampelman; James F. Stutts, McSweeney and Stutts on brief) for Appellants; Richard W. Hogan (Linda L. Royster, Hirschler, Fleischer, Weinberg, Cox & Allen on brief) for Appellees.

SPROUSE, Circuit Judge:

This is an appeal from a final judgment of the district court granting defendants' motion to dismiss an action involving allegations of "racial steering" and racial discrimination in the rental of housing accommodations in the City of Richmond and Henrico County, Virginia. "Racial steering" is a practice by which real estate brokers and agents preserve and encourage patterns of racial segregation by steering members of racial and ethnic groups to buildings occupied primarily by members of their own racial or ethnic group and away from buildings and neighborhoods inhabited by members of other races or groups.

This suit was brought under the Fair Housing Act of 1968, 42 U.S.C. §§ 3601, 3604, 3612(a) (hereafter Fair Housing Act) and the Civil Rights Act of 1866, 42 U.S.C. § 1982. The district court dismissed all the claims except that of a single plaintiff, Paul Allen Coles. It held that the other claims were time-barred by the 180-day limitation period of the Fair Housing Act, and that the other plaintiffs lacked standing to assert discrimination claims under either statute. After a careful review of the law, we conclude that all plaintiffs have standing under the Fair Housing Act and that their claims are not time-barred. We therefore reverse and remand for further proceedings. We do not reach the questions of standing under 42 U.S.C. § 1982.

The corporate plaintiff in this action is Housing Oppor-

tunities Made Equal (HOME). HOME is a Virginia non-profit corporation with about 600 members created for the purpose of eliminating unlawful, discriminatory housing practices, thereby seeking to make equal opportunity in housing a reality in the Richmond Metropolitan Area. HOME activities include: assisting individuals of all races in obtaining housing in the metropolitan area through the operation of a housing counseling service; investigating allegations of discrimination and referring complaints to appropriate federal and state authorities; conducting independent investigations of real estate brokers located in the metropolitan area to determine whether housing is being made available without regard to race; and taking appropriate steps to eliminate any racial discriminatory housing practices it may have found to exist.

The three individual plaintiffs, a "renter" and two "testers", reside in the City of Richmond or Henrico County. Paul Allen Coles, a black person, unsuccessfully sought to rent housing accommodations from the defendants. The two "tester" plaintiffs, Sylvia Coleman, a black person, and R. Kent Willis, a white person, contacted defendants in regard to the availability of rental apartments in the course of their employment with HOME to determine whether defendants were practicing racial steering. Corporate defendant is Havens Realty Corporation (Havens), which is in the business of providing real estate brokerage services for rental apartment units in Richmond. The remaining defendant is Rose Jones, a Havens employee.

The factual allegations in the complaint must be accepted as true in the present posture of the case.[1] So construed, the complaint reflects the following facts relevant to the disposition of this appeal.

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[1] *Warth v. Seldin*, 442 U.S. 490 (1975).

An unnamed black tester on March 14, 1978, inquired about rental vacancies at Havens and was told by Rose Jones that nothing was available. Later that day Willis, the white tester, asked about vacancies and was told by Jones that apartments were available at Colonial Court and Camelot Townhouse apartments. Colonial Court is integrated and Camelot Townhouse is predominately occupied by whites. A week later on March 21, 1978, black tester Sylvia Coleman asked generally about vacancies in apartments in Henrico County and was informed by one of defendant's employees that nothing was available, although the same day white tester R. Kent Willis was informed by Jones that there was an apartment at Colonial Court. Two days later, on March 23, 1978, black tester Coleman again asked Jones about vacancies and was told that nothing was available. White tester Willis was informed that day by Jones that an apartment was available at Colonial Court. On July 6, 1978, black tester Coleman asked specifically about Camelot Townhouse apartments and again received a negative response, but she was told about a vacancy at Colonial Apartments. That same day white tester John Barr, upon inquiry, was told an apartment was available at Camelot Townhouse apartments.

Coles visited defendant's offices on July 13, 1978, inquiring into the availability of apartments at Camelot Townhouses. He was informed there were no vacancies at Camelot but that an apartment was available in the adjoining integrated Colonial Court Apartment complex. The same day John Barr, a white tester, was informed by Rose Jones telephonically that an apartment was available at Camelot Townhouse—upon visiting the defendant's offices Barr was again informed that an apartment was available in the Camelot Townhouse.

The plaintiffs filed this action on January 9, 1979, individually and as a class action. The class included all persons who have rented or sought to rent residential property in Henrico County, Virginia, and who are adversely affected by the defendant's discriminatory acts, policies and practices. They seek declaratory and injunctive relief for the class, as well as an order requiring Havens to take various affirmative actions to overcome the effect of its past discriminatory actions. The individual plaintiffs in addition seek compensatory and punitive damages. HOME asks for its activity and litigation expenses.

Plaintiffs allege that the Richmond Metropolitan Area, including Henrico County, is racially segregated in its housing patterns; that is, it contains identifiable "white" and "black" neighborhoods; that the defendants' practices of racial steering contribute to the maintenance of existing neighborhood segregation and inhibit the development of stable, racially integrated neighborhoods; that defendants treat white and non-white prospective lessees differently based on their race or color; that defendants have engaged in practices to the detriment and injury of the plaintiffs and other similarly situated persons by consistently showing only prospective white customers rental units in buildings occupied primarily by white tenants, by consistently refusing or failing to show black prospective customers rental units in buildings occupied primarily by white tenants, and, on occasion, by failing or refusing to show prospective black customers rental units in less racially segregated buildings.

The complaint alleges that tester plaintiff Coleman (because of his race) and white tester Willis have been denied the right to rent real property in Henrico County and therefore have been deprived of the advantages and con-

veniences they would have enjoyed from living in this area, namely the right to the important social, professional, business, economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices.

It is also alleged that all the members of the class have been deprived of the right to the important social, professional, business, economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices, in violation of the Fair Housing Act.

The complaint alleges that HOME has had to devote significant resources to identify and counteract the defendant's racially discriminatory steering practices; and that HOME members have, as a result of defendants' practices, been deprived of the right to the important social, professional, business and economic, political and aesthetic benefits of interracial associations that arise from living in integrated communities free from discriminatory housing practices in violation of the Fair Housing Act.

STANDING

All plaintiffs have standing. Willis and Coleman have standing as testers but, even if this were not so, they have alleged sufficient personal harm to give them standing. HOME has Article III standing both as a representative of its members and on the basis of its allegations of harm to the corporation.

I.

TESTERS

The question of standing for testers under the Fair Housing Act was left unanswered by the Supreme Court in its

seminal pronouncement on Fair Housing Act standing in *Gladstone, Realtors v. Village of Bellwood,* 441 U.S. 91 (1979). The involvement of Willis and Coleman and their treatment by the defendants, however, presents strong public policy reasons for resolving that question in favor of Fair Housing Act standing for bona fide testers. The basic appropriateness of affording them standing to litigate todays issues of fair housing parallels the importance of the right to litigate the crucial issues decided in *Pierson v. Ray,* 386 U.S. 547 (1967) and *Evers v. Dwyer,* 358 U.S. 202 (1958). There are, of course, distinctions in the cases but the binding similarity is that they all treat the right of testers to challenge actions frustrating vital public policy where in most instances no other effective challenge could be mounted. The testers in *Pierson* actively sought integrated admission to the "whites only" section of the bus station; in *Evers* they occupied seats in the forbidden section of the bus. While the testers here only inquired about apartment rentals and did not apply to rent an apartment, their actions serve the same fundamental purposes as the testers in *Pierson* and *Evers.* Willis and Coleman purposefully approached the defendants as the first step in eradicating racial discrimination in housing, a social evil so antithetical to a free and democratic society that Congress has devised special and sharp tools for its excision. Housing, as a personal choice right of a citizen, is no less important than other rights affecting human dignity, such as unfettered access to public facilities. In *Evers* the Court wrote per curiam:

> A resident of a municipality who cannot use transportation facilities therein without being subjected by statute to special disabilities necessarily has, we think, a substantial, immediate, and real interest in the validity of the statute which imposes the disability. (Citation

> omitted). That the appellant may have boarded this particular bus for the purpose of instituting this litigation is not significant. (Citations omitted).

Id. at 204.

In *Pierson* a group of clergymen traveled to Jackson, Mississippi for the sole purpose of testing their rights to unsegregated public accommodations. The Court said, "[t]he petitioners had the right to use the waiting room of the Jackson bus terminal, and their deliberate exercise of that right in a peaceful, orderly, and inoffensive manner does not disqualify them from seeking damages under § 1983." 386 U.S. at 558 (footnote omitted).

In *Pierson* and *Evers* the court said in effect that since the plaintiffs were not representing injuries to third parties but rather to themselves there was no issue of prudential limitations. Here Willis and Coleman, in their capacity as employed testers, unquestionably assert the rights of third parties. As explained in *Warth*[3] however, Congress eliminated prudential considerations in Fair Housing Act cases, intending that standing be allowed as broadly as constitutionally permitted by Article III. *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 109 (1979); *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 209 (1972).

The breadth of Congressional protection against housing discrimination is apparent from the language of Section 3604(d), 42 U.S.C. § 3604(d) which makes it unlawful "[t]o represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available." This prohibition against providing false information creates a concomitant right to receive correct

[3] *Id.* at 509-10.

housing information without regard to race or color. Individuals illegally denied housing by subterfuge are, by the nature of the wrongful act, less able than others in our society to require enforcement of the Civil Rights Act through private litigation as "private attorneys general". There is no rational reason why their bona fide surrogates cannot pursue their cause. If the defendants had supplied the testers truthful information—that apartments were available both in Colonial Apartments and Camelot Town-House Apartments—there would have been no injury and the social reform legislated by Congress would have been advanced without resort to the courts.

It is not necessary to formulate a general rule circumscribing standing for tester plaintiffs. Suffice it to say that they occupy a narrow island limited to areas fundamentally necessary for access to the federal courts as presented by *Pierson* and *Evers* or, as here, where Congress has recognized a simliar deeply-grounded human right. The legislative design of the Fair Housing Act provides such broad standing for enforcement of the right. This is consistent with the *Trafficante* and *Bellwood* interpretation of the Fair Housing Act—maintaining the prophylactic quality of Article III limitations while recognizing the elasticity necessary to accommodate constitutional Congressional intent.

II

DIRECT INJURY TO "TESTERS"

Coleman and Willis also alleged violations of their right to enjoy the fruits of an integrated community in much the same language as the individual plaintiffs in *Trafficante* and *Bellwood*. This similarity gives weight to their status as bona fide "testers". These allegations, moreover, are

sufficient to grant standing for each of them as individual plaintiffs.

The Supreme Court in *Warth*, discussing an alleged violation of 42 U.S.C. § 1981, stated:

> We hold only that a plaintiff who seeks to challenge exclusionary zoning practices must allege specific, concrete facts demonstrating that the challenged practices harm *him*, and that he personally would benefit in a tangible way from the courts' intervention. Absent the necessary allegations of demonstrable, particularized injury, there can be no confidence of "a real need to exercise the power of judicial review" or that relief can be framed "no broader than required by the precise facts to which the court's ruling would be applied."

Warth v. Seldin, 422 U.S. at 508.

The *Warth* opinion indicated a reservation as to whether the same ruling would have applied to a Fair Housing Act case.[3] *Trafficante* and *Bellwood* however decided standing under Fair Housing Act principles. Coleman and Willis both claim deprivation of community rights in language at least as specific as approved there. They are residents of Henrico County included within the Richmond Metropolitan area. They claim the practice of racial steering has adversely affected the area in which they live and that the defendants have engaged in racial steering. Black tester Coleman claims she has been denied the right to rent property and to make and enforce contracts for the lease of real estate in Henrico County by defendants' action; has been deprived of the advantages and conveniences she would have enjoyed from living in the area, and has been deprived of the right to the important social, professional, business, economic, political, and aesthetic benefits of in-

[3] *Id.* at 513 n. 21.

terracial associations that arise from living in integrated communities free from discriminatory housing practices. White tester Willis claims he has been deprived of the same rights afforded by integrated communities. Both Colemand and Willis claim they have been subjected to a "dual" housing market in Henrico County on the basis of race or color by defendants' practices.

Housing discrimination injuries are not inflicted so neatly that the wounded can always be identified as individuals, representatives of individuals, or members of a community. The Supreme Court's expressions on standing thus are not rigidly compartmentalized as governing exclusively those directly injured, testers, or members of the community.

In *Trafficante v. Metropolitan Life Insurance,* [sic] *Co.,* 409 U.S. 205, 208 (1972), one black and one white tenant of an apartment complex complained of discriminatory rental practices, alleging:

> (1) they had lost the social benefits of living in an integrated community; (2) they had missed business and professional advantages which would have accrued if they had lived with members of minority groups; (3) they had suffered embarrassment and economic damage in social, business, and professional activities from being "stigmatized" as residents of a "white ghetto". (Footnote omitted).

The Court held plaintiffs were persons "aggrieved" as defined in Section 810(a) of the Fair Housing Act, i.e., any person who claims to have been injured by a discriminatory housing practice. In this context Justice Douglas said:

> The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is, as Senator Javits said in supporting the bill, "the whole

> community," 114 Cong. Rec. 2706, and as Senator Mondale who drafted § 810(a) said, the reach of the proposed law was to replace the ghettos "by truly integrated and balanced living patterns."

Id. at 211.

In *Bellwood* four white plaintiffs, who were residents of the target area of Bellwood, alleged that discriminatory housing practices deprived them of "the social and professional benefits of living in an integrated society." 441 U.S. at 111. The Court noted the allegation was similar to that in *Trafficante*, where it was held that the injury alleged was sufficient to satisfy the constitutional standing requirement of actual or threatened harm. The broad definition of "person aggrieved" under § 810 of the Fair Housing Act was considered a clear indication of Congressional intent to permit liberal standing. The Court considered this to be a part of the scheme of the Act to encourage enforcement by complaints from private persons or "private attorneys general" which are "the main generating force" in "vindicating a policy that Congress considered to be of the highest priority." The 'private attorneys general' role under the Civil Rights Act of 1968 serves not only to protect "those against whom a discrimination is directed but also those whose" daily lives are affected. *Trafficante, Id.* at 209 & 211.

We have neither the power nor the desire to minimize the "case and controversy" requirements of Article III. The modern decisions have not. The constitutional inquiry necessary in confining litigation to proper parties over appropriate disputes remains as generally stated in *Warth v. Seldin*, 422 U.S. 490, 498-99 (1974), *citing, Baker v. Carr*, 369 U.S. 186, 204 (1962)—"whether the plaintiff has 'alleged such a personal stake in the outcome of the

controversy' as to warrant *his* invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf."

III

ORGANIZATIONAL STANDING

The plaintiff HOME claims its members have been deprived of community advantages by defendants' actions in the same language utilized by Coleman and Willis. HOME therefore has representational standing to litigate these claims on behalf of its members.[4] *Hunt v. Washington Apple Advertising Commission*, 432 U.S. 333 (1977), summarizes the requirements of representational standing where the organizational plaintiff has not itself suffered injury:

> [W]e have recognized that an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit.

Id. at 343.

See also Warth v. Seldin, 422 U.S. at 511 wherein the Court said:

> Even in the absence of injury to itself, an association may have standing solely as the representative of its members. . . . The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action

[4] It however can not represent its members in individual claims for damages where both the fact and extent of injury would require individualized proof. *Warth v. Seldin*, 422 U.S. at 511 & 515-16.

> of the sort that would make out a justiciable case had the members themselves brought suit.

Id. at 511.

The complaint also alleges sufficient injury to HOME as an entity to confer standing on it directly. It claims HOME has been frustrated in its efforts to assist equal access to housing through counseling and other referral services. HOME has devoted significant resources identifying and counteracting the defendants' racially discriminatory steering practices.

This is more than the protestations of general interest found to be insufficient for standing in *Sierra Club v. Morton*, 405 U.S. 727 (1972) and *Warth v. Seldin, supra*, and by the court of appeals in *Bellwood*, 569 F.2d 1013, 1917 [sic] (1978). Although not equaling, it approaches the injury suffered by the nonprofit developer in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). *See also Park View Heights Corp. v. City of Black Jack*, 467 F.2d 1208 (8th Cir. 1972); *Heights Community Congress v. Rosenblatt Realty, Inc.*, 73 F.R.D. 1 (N.D. Ohio 1975). In *Arlington Heights* the Court said:

> MHDC is a nonprofit corporation. Its interest in building Lincoln Green stems not from a desire for economic gain, but rather from an interest in making suitable low-cost housing available in areas where such housing is scarce. This is not mere abstract concern about a problem of general interest. See *Sierra Club v. Morton, supra*, at 739. The specific project MHDC intends to build, whether or not it will generate profits, provides that "essential dimension of specificity" that informs judicial decisionmaking. *Schlesinger v. Reservists to Stop the War*, 418 U.S. 208, 221 (1974).

Id. at 263.

Although HOME's goals cannot be equated with bricks and mortar, they are functional, requiring identifiable action and the expenditure of effort and funds which may result in success or failure in achieving its objectives. Its "projects" therefore "provides that 'essential dimension of specificity' that informs judicial decision making," as described in *Arlington Heights.*

IV

THE TARGET AREA

The defendants in oral argument contended that the City of Richmond or Henrico County is too large[5] as a matter of law to comprise a "target area" of housing discrimination. The "target area" in *Trafficante* was an apartment complex of 8,200 tenants, while the population of Bellwood in which the target neighborhood was located was estimated at 20,969. *Gladstone, Realtors v. Bellwood, Id.* at 113 n. 27. As the Court said in *Bellwood,* however:

> The constitutional limits of respondents' standing to protest the intentional segregation of their community do not vary simply because that community is defined in terms of city blocks rather than apartment buildings. Rather, they are determined by the presence or absence of a "distinct and palpable injury," *Warth v. Seldin,* 422 U.S., at 501, to respondents resulting from petitioners' conduct. A "neighborhood" whose racial composition allegedly is being manipulated may be so extensive in area, so heavily or even so sparsely populated, or so lacking in shared social and commercial intercourse that there would be no actual injury to a par-

[5] The population of the City of Richmond is 219,883 while that of Henrico County, Virginia is 172,922. Department of Commerce, Bureau of Census, Current Population Reports, Special Census of the Richmond, Virginia areas, April 4, 1978, p. 1, published August, 1979.

> ticular resident. The presence of a genuine injury should be ascertainable on the basis of discrete facts presented at trial. (Footnote omitted).

Id. at 114.

The district court's dismissal prevented plaintiffs Coleman, Willis, and HOME from proceeding to trial. Since allegations bearing on standing must be actualized by proof, the defendants may, on remand, contest these as any other facts. The complaint in the instant case does not specifically allege that the discrimination practiced at Colonial Courts and Camelot Townhouse Apartments affect the area where the testers reside. The district court may require the complaint to be amended for such allegation necessary to facilitate production of evidence bearing on this issue. If the allegations are not supported by proof at trial, the case may be terminated for lack of standing at an appropriate stage of the trial. *Id.* at 115 n. 31.

V

STATUTE OF LIMITATION

The defendants contend and the district court held that all the alleged Fair Housing Act violations except the one of July 13, 1978, involving Coles are time-barred by the statute of limitation contained in 42 U.S.C. § 3612(a). The applicable part of that statute states simply: "a civil action shall be commenced within one hundred and eighty days after the alleged discriminatory housing practice occurred."

It is conceded that each of the specific acts of the defendants except the one of July 13 transpired more than 180 days before the complaint was filed. The defendants contend that each discrete act constitutes an "occurrence" and an action is barred as to each specific act after 180 days. The

plaintiffs contend that the "occurrence" is the defendant's continuing practice of racial steering and that the 180 days commences with the last act—in this case the violation of July 13. We agree with the plaintiffs and hold that none of the allegations in the complaint are time-barred by the 180-day provision.

Hickman v. Fincher, 483 F.2d 855 (4th Cir. 1973), affirmed a district court ruling that barred an action commenced more than 180 days after the last act of discrimination. *Hickman*, however, is not dispositive because there was no allegation of a continuing violation or a pattern of violations.

There is an appealing simplicity equating "occurrence" to a discrete act. Not simple, however, are the social ills targeted by Congress nor the actions of putative landlords. It is not isolated instances of discrmination that are the primary focus of the statute—rather it is a generalized practice of housing discrimination.

The Court of Appeals for the Seventh Circuit considered a similar contention in *Baker v. F & F Investment*, 420 F.2d 1191 (7th Cir. 1970). Negro purchasers of real estate on installment contracts alleged they were burdened with discriminatory prices and terms. The defendants there argued that they had performed only a single action—the execution of the contract—and that this was time-barred. The court disagreed, holding the violations continued during the lives of the contracts:

> Plaintiffs have alleged wrongs committed by defendants which continue during the entire lives of the individual purchase contracts. They have alleged a conspiracy among defendants, the object of which was the establishment of a continuing relationship with individual plaintiffs. . . . Because of the continuing nature of the overt acts alleged, the statutes of limitations do

> not commence to run when the contracts were executed but when they terminate.
>
> . . . .
>
> [T]he touchstone of our inquiry must be the nature and extent of defendants' behavior, not the duration of plaintiff's injury.

Id. at 1200 (Citation omitted).

See Cedeck v. Hamiltonian Federal Savings & Loan Association, 551 F.2d 1136 (8th Cir. 1977) and *Macklin v. Spector Freight Systems, Inc.*, 478 F.2d 979 (D.C. Cir. 1973). See also *Fair Housing Council of Bergen County, Inc. v. Eastern Bergen County Multiple Listing Service, Inc.*, 422 F.Supp. 1071, 1078 (D.N.J. 1976) where the New Jersey District Court said, in considering the § 3612(a) time limitation:

> Congress obviously included such a provision to prevent the district courts from being used to exhume stale grievances. No such considerations apply to the case at bar. Plaintiffs have alleged what amounts to a continuing conspiratorial practice on the part of multiple, influential defendants. Taking the complaint as true, as is required at this early juncture, plaintiffs' grievance is anything but stale. It is fresh and immediate.

See Stingley v. City of Lincoln Park, 429 F.Supp. 1379 (E.D. Mich. 1977).

The Sixth Circuit in *Hunter v. Atchinson*, 466 F.2d 490 (6th Cir. 1972), held that the facts of a given case would determine whether the language of § 3612(a) means the statute runs from the first or the last of the discriminatory acts. That opinion reversed the district court's dismissal and remanded for an evidentiary hearing noting "[t]his case may ultimately require us to construe the Congressional purpose involved in the limitation. . . ." *Id.* at 491.

There is no reason to differentiate the purpose of the § 3412(a) statute of limitation from general statutes barring litigation after a lapse of time. Lawmakers protect litigants from perpetual threats of lawsuits and protect the integrity of enlightened fact finding. These policies do not militate against our holding. The instant controversy was continuing—the evidence easily obtainable. It is not unfair to require these defendants to litigate the matter when they were, according to the complaint, acutely aware of their continuing activities. Coles, Coleman, Willis and HOME were involved in active, consecutive, connected, and continuing attempts to secure or determine compliance with the Fair Housing Act. The defendants, just as resolutely, continued their practice of prohibited discrimination against these specific individuals. This, under the circumstances, is a continued relationship between the defendants and the plaintiffs and a continued violation of § 3604 so that the violations continued to "occur" until the last act of July 13, 1978. By the very nature of these offenses, "occurrence" must be thus construed to effect the remedial purposes of the act.

Reversed and Remanded.